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THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
WATER COUNCIL

Appeal of Town of Nottingham  
Docket No. 04-15 WC

**MOTION TO DISMISS APPEAL**

NOW COMES the Department of Environmental Services ("Environmental Services"), by and through its attorneys, the Office of the Attorney General, and respectfully requests that the Water Council dismiss the above referenced appeal. In support of this Motion, Environmental Services states as follows:

1. This is an appeal of a large groundwater withdrawal permit issued to USA Springs pursuant to RSA ch. 485-C.
2. RSA 485-C:21, VI provides the only means to appeal a decision under the large groundwater withdrawal permit statute. Specifically, RSA 485-C:21, VI states:  
  
Rehearings and appeals from a decision of the department under this section shall be in accordance with RSA 541.
3. "Department" is defined as the Department of Environmental Services.
4. RSA 541, which governs appeals in this case, requires (1) a motion for rehearing be filed with Environmental Services (RSA 541:3) and (2) an appeal after a decision on the motion for rehearing can only be filed with the New Hampshire Supreme Court (RSA 541:6).
5. The Town of Nottingham has filed a Motion for Rehearing with Environmental Services. The Department of Environmental Services has not yet ruled on that Motion. Thus, an appeal before a decision on the Motion for Rehearing is premature.
6. Even if Environmental Services does rule against the Town of Nottingham on its Motion for Rehearing, the proper venue for an appeal is directly to the Supreme Court.

7. Given the specific, unambiguous, language that requires all appeals of large groundwater withdrawal permits go directly to the Supreme Court, the Water Council does not have jurisdiction to hear the appeal filed by the Town of Nottingham.


WHEREFORE, for the reasons as stated above, Environmental Services respectfully requests that the Council dismiss the above referenced appeal.

RESPECTFULLY SUBMITTED

State of New Hampshire  
Department of Environmental Services

By its Attorney,  
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By:

  
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CERTIFICATION

I certify that a copy of this Motion has been forwarded via facsimile and first class mail to E. Tupper Kinder, Esq.

  
Richard W. Head